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WILLIAM T. WALSH  
CLERK

11 UNITED STATES DISTRICT COURT  
12 DISTRICT OF NEW JERSEY

13 CSX Corporation,

14 Plaintiff,

15 vs.

16 Adam Riben, a.k.a. Atom Emet, a.k.a.  
17 Atom Smasher,

18 Defendant.

Civil Action No. 01-5206(WGB)  
Hon. \_\_\_\_\_, U.S.D.J.

21 For its complaint, Plaintiff avers as follows:

23 PARTIES

24 1. Plaintiff CSX Corporation ("CSX") is a Virginia Corporation  
25 having a place of business at One James Center, Richmond, Virginia 23219.

26 2. Defendant Adam Riben, a.k.a Atom Emet, a.k.a. Atom Smasher  
27 ("Emet"), upon information and belief, is a resident of New Jersey with an  
28

1 address at 26B, Exeter Avenue, Highland Park, New Jersey 08817-4904.

2  
3 JURISDICTION

4 3. This action arises under 15 U.S.C. §§ 1051 et seq. and asserts  
5 related claims of trademark infringement, dilution, and pendent state claims  
6 as set forth more fully herein.

7 4. This Court has jurisdiction pursuant to 15 U.S.C. § 1121,  
8 28 U.S.C. § 1338 and the pendent jurisdiction of the Court.

9  
10 VENUE

11 5. Venue lies in this district pursuant to 28 U.S.C. § 1391 as this  
12 is the judicial district where the Defendant resides and a substantial part of  
13 the events alleged herein occurred in this district.

14  
15 GENERAL ALLEGATIONS

16 6. Since long prior to the acts complained of herein, CSX and its  
17 related companies have provided a variety of transportation and other  
18 services to customers worldwide, in interstate commerce, and in this  
19 judicial district in connection with the trade names, trademarks and service  
20 marks CSX, CSX CORPORATION and CSX TRANSPORTATION  
21 (hereafter, the "CSX Marks"). The family of CSX Marks is displayed in a  
22 distinctive logotype as shown in Exhibit A attached hereto.

23 7. CSX owns United States Patent and Trademark Office  
24 Trademark and Service Mark Registrations for CSX (Registration No.  
25 2,475,447); CSX CORPORATION in logotype (Registration No.  
26 2,364,124); and CSX TRANSPORTATION in logotype (Registration Nos.  
27 1,440,849; 1,432,208).

28 8. The CSX Marks became famous and distinctive of Plaintiff

1 many years prior to the acts of Emet complained of herein.

2 9. For its principal corporate website, CSX owns the domain name  
3 and accompanying website found at <[www.csx.com](http://www.csx.com)> (the "CSX Site"). A  
4 copy of the homepage of the CSX Site is attached hereto as Exhibit B.

5 10. On information and belief, Emet registered and owns the  
6 domain names <[www.csx-diversity.com](http://www.csx-diversity.com)>, <[www.csx-hates-jews.com](http://www.csx-hates-jews.com)> and  
7 <[www.csx-sucks.com](http://www.csx-sucks.com)>.

8 11. On information and belief, Emet owns and controls an active  
9 website at the <[www.csx-diversity.com](http://www.csx-diversity.com)> address ("Emet's Site"). Emet  
10 also uses "CSX" and numerous other CSX Marks in and as metatags and a  
11 website title to attract traffic to Emet's Site. In particular, Emet has  
12 copied the entire sequence of metatags used by CSX for its <[csx.com](http://csx.com)>  
13 website. The content of Emet's Site consists of attacks on and criticisms  
14 of CSX.

15 12. On information and belief, Emet's Site <[csx-diversity.com](http://csx-diversity.com)>  
16 when first made active showed a homepage (copy attached as Exhibit C)  
17 which copied and mimicked the color, design scheme and trademark  
18 logotype of the CSX Site homepage, so as to present a confusingly similar  
19 look and feel to Internet users, as may be seen by comparing Exhibits B  
20 and C. The original Emet Site homepage was dominated by the words CSX  
21 DIVERSITY using the logotype of Plaintiff's CSX mark, as may be seen by  
22 comparing Exhibits A and C.

23 13. CSX protested Emet's trademark and trade dress infringement  
24 and dilution. In response, Emet made certain limited changes to his <[csx-diversity.com](http://csx-diversity.com)>  
25 homepage, thereby impliedly admitting that he had  
26 exceeded the bounds of trademark law. Instead of CSX DIVERSITY,  
27 Emet's homepage at <[csx-diversity.com](http://csx-diversity.com)> now uses CSX SUCKS in  
28 Plaintiff's logotype, as shown in Exhibit D, hereto.

1           14. Despite these changes, Emet's Site at <csx-diversity.com> still  
2 exceeds the permissible bounds of trademark fair use by (a) by using <csx-  
3 diversity.com> as a domain name; (b) using CSX metatags and a website  
4 title which are identical or confusingly similar to the CSX Marks to divert  
5 traffic away from <www.csx.com> and drive traffic to Emet's Site; (c)  
6 using the CSX trademark logotype; and (d) exposing Internet users seeking  
7 Plaintiff CSX to site content which impermissibly tarnishes the CSX  
8 Marks.

9           15. Emet's acts, described herein, have caused a likelihood of  
10 confusion and dilution by tarnishment of Plaintiff's famous CSX Marks.

11           16. Emet has willfully continued to operate his infringing site after  
12 receipt of notice and warning from CSX.

13           17. Upon information and belief, Emet intends to operate similar or  
14 identical infringing websites at <www.csx-hates-jews.com>, <www.csx-  
15 sucks.com> and at other domain names that CSX is currently unaware of.

16           18. CSX will not contest Emet's use of <csx-sucks.com> as a  
17 domain name and title for a website.

18           19. CSX will not contest Emet's use of the expression CSX SUCKS  
19 in a typeface different from the CSX logotype on a site located at  
20 <www.csx-sucks.com>.

21           20. CSX will not contest Emet's expression of his non-defamatory  
22 statements regarding CSX, unless such expression causes a likelihood of  
23 confusion with, or dilutes, any marks owned by CSX.

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2  
3 FIRST CLAIM

4 LIKELIHOOD OF CONFUSION  
5 VIOLATION OF 15 U.S.C. § 1114

6 21. Defendant's use of the CSX Marks as alleged herein is likely to  
7 cause confusion or to cause mistake or to deceive in violation of 15 U.S.C.  
8 § 1114.

9 SECOND CLAIM

10 DILUTION  
11 VIOLATION OF 15 U.S.C. § 1125(c)

12 22. Defendant's use of the CSX Marks as alleged herein dilutes and  
13 tarnishes the distinctive quality of Plaintiff's famous marks in violation of  
14 15 U.S.C. § 1125(c).

15 THIRD CLAIM

16 STATE TRADEMARK INFRINGEMENT  
17 VIOLATION OF N.J.S.A. § 56:3-13.16 AND COMMON LAW

18 23. Defendant's actions, as alleged herein, have infringed  
19 Plaintiff's rights in the CSX Marks in violation of N.J.S.A. § 56:3-13.16  
20 and New Jersey common law.

21 FOURTH CLAIM

22 STATE DILUTION  
23 VIOLATION OF N.J.S.A. § 56:3-13.20 AND COMMON LAW

24 24. Defendant's actions, as alleged herein, have diluted the  
25 distinctive quality of Plaintiff's CSX Marks and caused a likelihood of  
26 confusion in violation of N.J.S.A. § 56:3-13.20 and New Jersey common  
27 law.  
28

PRAYER FOR RELIEF

WHEREFORE, Plaintiff CSX CORPORATION prays that this Court enter a Final Judgment against Defendant Adam Riben, a.k.a. Atom Emet, a.k.a Atom Smasher as follows:

(1) Pursuant to 15 U.S.C. § 1116 and New Jersey law, that Defendant and Defendant's relatives, agents, representatives, employees, assigns, attorneys and all others in concert and/or participation with them be permanently enjoined from:

A. Using the CSX Marks, or any other marks owned by Plaintiff or its related entities, in metatags, website titles, or in any domain name likely to cause confusion regarding, or dilution of, such marks;

B. Using the CSX Marks, CSX logotype, CSX designs, or any other marks owned by Plaintiff or its related entities, in any way that is likely to cause confusion regarding, or dilution of, such marks, logotypes or designs;

(2) That the Court order the cancellation or transfer to Plaintiff of <[www.csx-diversity.com](http://www.csx-diversity.com)>, <[www.csx-hates-jews.com](http://www.csx-hates-jews.com)> and any other domain names owned by Defendant that are likely to cause confusion regarding, or dilution of, the CSX Marks or any other marks owned by Plaintiff or its related entities, but permit Defendant to use <csx-sucks.com> for a website to express protectable opinions or parody regarding CSX;

1  
2 (3) That Plaintiff have such other and further relief as the Court  
3 deems equitable and just in the circumstances.  
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21 Attorneys for Plaintiff  
22 CSX CORPORATION

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24 By 

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26 MICHAEL R. GRIFFINGER  
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Dated: November 7, 2001.